

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OLIVEIRA DOS SANTOS,
Petitioner,
v.
NAPA STATE HOSPITAL,
Respondent.

Case No. [21-cv-04224-JD](#)

ORDER OF DISMISSAL

Petitioner, a patient at Napa State Hospital, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted in San Mateo County, which is in this district, so venue is proper here. *See* 28 U.S.C. § 2241(d).

DISCUSSION

STANDARD OF REVIEW

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)).

LEGAL CLAIMS

Petitioner seeks relief regarding the conditions of his confinement and his underlying conviction. “Federal law opens two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to the lawfulness of confinement or to particulars affecting its duration are the province of habeas corpus.” *Hill v. McDonough*, 547 U.S. 573, 579 (2006) (quoting *Muhammad v. Close*, 540 U.S. 749, 750 (2004)). “An inmate’s challenge to the circumstances of his confinement, however, may be brought under § 1983.” *Id.*

Habeas is the “exclusive remedy” for the prisoner who seeks “immediate or speedier release” from confinement. *Skinner v. Switzer*, 562 U.S. 521, 533-34 (2011) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)); see *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). “Where the prisoner’s claim would not ‘necessarily spell speedier release,’ however, suit may be brought under § 1983.” *Skinner*, 562 U.S. at 533-34 (quoting *Wilkinson*, 544 U.S. at 82). In fact, a § 1983 action is the exclusive remedy for claims by state prisoners that do not “lie at the ‘core of habeas corpus.’” *Nettles v. Grounds*, 830 F.3d 922, 931 (9th Cir. 2016) (en banc) (quoting *Preiser*, 411 U.S. at 487). A claim that meets the statutory criteria of § 1983 may be asserted unless it is within the core of habeas corpus because “its success would release the claimant from confinement or shorten its duration.” *Thornton v. Brown*, 757 F.3d 834, 841 (9th Cir. 2014) (citing *Preiser*, 411 U.S. at 500).

Petitioner has not exhausted the habeas claims in state court. He has presented claims only to the Ninth Circuit and the State Bar of California. Prisoners in state custody who wish to challenge collaterally in federal habeas proceedings the fact or length of their confinement are required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b), (c); *Rose v. Lundy*, 455 U.S. 509, 515-16 (1982). The habeas action is dismissed without prejudice.

1 Petitioner may file a federal petition in this Court once the California Supreme Court has ruled on
2 his claims.

3 Petitioner's claims about the conditions of his confinement are dismissed without
4 prejudice, and plaintiff may file a separate civil rights action. If plaintiff files a civil rights action,
5 he must identify specific defendants and describe how they violated his constitutional rights.
6 Simply stating that he was unable to file a grievance, without more information, is insufficient.

7 **CONCLUSION**

8 1. Petitioner is permitted to proceed in forma pauperis, but this action is **DISMISSED**
9 without prejudice. A certificate of appealability is **DENIED**.

10 2. The Clerk is requested to close this case.

11 **IT IS SO ORDERED.**

12 Dated: July 8, 2021

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16 JAMES DONATO
17 United States District Judge
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